

VZCZCXRO6700
RR RUEHBZ RUEH DU RUEHJO RUEHRN
DE RUEHMR #0153/01 1381030
ZNR UUUUU ZZH
R 181030Z MAY 09
FM AMEMBASSY MASERU
TO RUEHC/SECSTATE WASHDC 4163
INFO RUCNSAD/SADC COLLECTIVE
RUEHMR/AMEMBASSY MASERU 4590

UNCLAS SECTION 01 OF 02 MASERU 000153

SIPDIS

E.O. 12958: N/A

TAGS: [PGOV](#) [PHUM](#) [LT](#)

SUBJECT: LESOTHO: RELATIONS DETERIORATE BETWEEN THE LAW SOCIETY AND
THE CHIEF JUSTICE

MASERU 00000153 001.2 OF 002

Summary

[11.](#) The Law Society of Lesotho (equivalent to the American Bar Association), convened a press conference on April 17, 2009, to announce the establishment of a "commission of inquiry on the root causes of the current unsatisfactory state of the administration of justice in Lesotho". The decision by the Law Society did not please the Chief Justice and tension between the two has been increasing gradually. As if that was not enough, on May 12, the Law Society wrote a strongly worded letter to the office of the Chief Justice expressing their dissatisfaction with the lawyers who have been nominated for the prestigious title of King's Counsel.

Law Society investigates Lesotho's judicial system

[12.](#) Advocate Nthloki, the chairman of the Commission of Inquiry, stated that the Law Society, acting on its mandate (Law Society Act of 1983) vested by the Parliament of Lesotho to act as a watchdog over citizens' fundamental and constitutional rights and to preserve the rule of law, decided to mount an inquiry into the root causes of the unsatisfactory state of the administration of justice in Lesotho. Nthloki stressed that the commission's work was not a "witch hunt" and reiterated they were guided by principles which are in line with and in pursuance of the founding statute of the Law Society, which proclaims as one of its objectives: "To assist in the administration of justice."

[13.](#) Nthloki indicated that the Law Society was disappointed with the Chief Justice's response to their request for the High Court to postpone cases filed by lawyers who are part of the Commission of Inquiry, following a statement by the Office of the Chief Justice that no legal cases will be postponed and that the Commission's work was regarded as a private exercise. Nthloki pointed out that the request was made in order to enable practicing lawyers to focus on commission work without any disturbance for a period of two weeks. He mentioned that the Commission will have powers to subpoena "any individual including the Minister of Justice and the Chief Justice" and will also have the power to issue arrest warrants.

[14.](#) The Commission began their inquiry on Monday, April 20. The resulting Law Society report will contain recommendations for the Attorney General to prosecute if there is evidence of corruption; the Society may also opt for private prosecution if the Attorney General fails to prosecute.

Choice of King's Counsel unpopular with Lesotho lawyers

15. In a sign of the continuing tensions between practicing lawyers and the office of the Chief Justice, the Lesotho Law Society has written a strongly worded letter to the office of the Chief Justice expressing their dissatisfaction with the lawyers who have been nominated for the prestigious title of King's Counsel in an annual exercise conducted by the Chief Justice's office. To be eligible for nomination, a practicing lawyer must meet stringent criteria that include at least fifteen years with an excellent track record as a practicing lawyer. According to Embassy contacts who are part of the law fraternity, "appointment as the King's Counsel is the equivalent of winning a football premier league fifteen years in a row." But this year's nominations did not go down well with members of the legal profession, with lawyers complaining that two of the candidates do not come anywhere near meeting the criteria for the coveted title. The three lawyers who have been nominated are: Advocate Leaba Thetsane (Director of Public Prosecutions); Advocate N.A.M Fanana (Lecturer at the National University of Lesotho), and Advocate Kananelo Mosito (Acting Judge of the High Court and former private practicing lawyer).

16. The lawyers believe that Thetsane and Fanana do not meet the stipulated criteria. The Law Society's letter states that Thetsane cannot be considered to be a practicing lawyer as he "exercises his powers through delegation to subordinate law officers and in the main he instructs counsel from South Africa." The letter goes on to state that Thetsane's appearance in court has been minimal. The Law Society also argues that Fanana has not been practicing as an advocate for a period of fifteen years and therefore she cannot be considered to have rendered a significant service. In the local press, many lawyers expressed shock and disappointment at the two nominations while others warned that their profession is taking a tumble.

MASERU 00000153 002.2 OF 002

Comment

17. Tensions between the Lesotho Law Society and the office of the Chief Justice have been simmering for a long time. The letter of dissatisfaction regarding the nominations is the second incident in this continuing chain of events. At this stage, both sides appear to be intransigent. How the judiciary weathers these challenges by the Law Society will be an indication of the strength and integrity of Lesotho's justice system.
NOLAN